

JUDGE BATTS

08 CV 6400  
COPY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TRUSTEES OF THE IATSE NATIONAL HEALTH:  
AND WELFARE FUND, THE IATSE ANNUITY :  
FUND, AND THE IATSE NATIONAL :  
PENSION FUND, :  
:

Plaintiffs, :

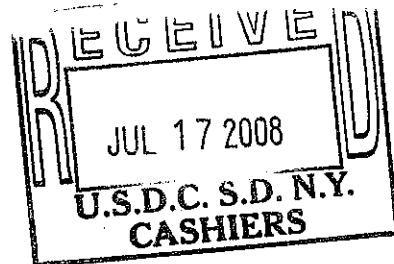
-against- :

SPRING BREAK 83, LOUISIANA, LLC :

Defendant. :  
-----X

COMPLAINT

ECF Case



Plaintiffs, the Trustees of the IATSE National Health and Welfare Fund, the IATSE Annuity Fund, and the IATSE National Pension Fund ("Trustees"), by and through their counsel, Spivak Lipton LLP, bring this action to compel Spring Break 83, Louisiana, LLC ("Employer") to remit benefit fund contributions, interest and liquidated damages owed pursuant to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Complaining of Defendant, Plaintiffs respectfully allege as follows:

JURISDICTION

1. This Court has jurisdiction of this action against the Defendant under Sections 502(a)(3), 502(e)(1), 502(e)(2), and 502(f) of ERISA, 29 U.S.C. §§ 1132(a)(3), 1132(e)(1), 1132(e)(2), and 1132(f).

PARTIES

2. At all relevant times Plaintiffs have administered and now administer the IATSE National Health and Welfare Fund, the IATSE Annuity Fund, and the IATSE National Pension Fund (collectively referred to as the "Funds").

3. The IATSE National Pension Fund was established pursuant to a collective bargaining agreement in 1957 and by Agreement and Declaration of Trust of the Fund. The IATSE Annuity Fund and the IATSE Health and Welfare Fund were established pursuant to a collective bargaining agreement in 1973 and by the Agreements and Declaration of Trust of the Funds.

4. The Funds are “employee benefit” plans established under Section 302(c)(5) of the Labor-Management Relations Act (“LMRA”), 29 U.S.C. § 186(c)(5), and within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3). The principal place where the Fund is administered is 417 Fifth Avenue, 3<sup>rd</sup> Floor, New York, New York 10018.

5. The purpose of the Funds is to receive contributions from employers who are parties to collective bargaining agreements with the International Alliance of Theatrical Stage Employees Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada (“IATSE”) and its affiliated locals, to invest and maintain those monies, and to provide pension, health, and annuity benefits to those qualified to receive them.

6. Upon information and belief, Defendant Employer is a corporation organized and existing under the laws of the State of Louisiana with its principal place of business at 607 St. Charles Avenue, Suite 300, New Orleans, LA 70130. It is an employer engaged in an industry affecting commerce within the meaning of Sections 3(5), 3(11), 3(12), and 4(a)(1) of ERISA, 29 U.S.C. §§ 1002(5), 1002(11), 1002(12), and 1003(a)(1), and of Sections 2(2), 2(6), and 2(7) of the LMRA, 29 U.S.C. §§ 152(2), 152(6), and 152(7).

### FACTS

7. Defendant is party to a series of Trust Acceptance Documents with IATSE Local 478, effective September 23, 2007. Copies of the Trust Acceptance Documents are attached hereto

as Exhibit A.

8. Under the Trust Acceptance Documents, Employer required to remit to the Funds the following amounts: to the IATSE National Health and Welfare Fund, \$40.00 per covered employee per work day; to the IATSE Annuity Fund, \$20.00 per covered employee per work day; and to the IATSE National Pension Fund, \$10.00 per covered employee per work day.

9. Pursuant to the contract, Defendant is delinquent in its contributions to the Funds in an estimated principal amount of \$50,734.82 for the period September 23, 2007, through November 17, 2007. The amounts owed to each Fund are as follows: to the IATSE National Health and Welfare Fund, \$23,960.00; to the IATSE Annuity Fund, \$20,784.82; and to the IATSE National Pension Fund, \$5,990.00. These amounts, including interest and liquidated damages thereon, are still due and owing.

10. Defendant's failure to make required payments is in violation of the Collective Bargaining Agreement, the Agreements and Declaration of Trust of the Fund, and the provisions of ERISA. Plaintiffs seek enforcement of these provisions pursuant to Section 502(a)(3)(b)(ii) of ERISA, as amended by the Multiemployer Pension Amendments Act of 1980, 29 U.S.C. §§ 1132(a)(3)(b)(ii).

11. As a result of the above described omissions and breaches of the Collective Bargaining Agreement by Defendant, Participants of the Funds are being deprived of health insurance to their substantial and irreparable injury.

12. Plaintiffs, on their own behalf and on behalf of all employees for whose benefit the Funds were established, have requested the Defendant to perform its obligations, but the Defendant has ignored said requests.

13. Plaintiffs are without an adequate remedy at law and will suffer

immediate, continuing and irreparable injury and damage unless the Defendant is ordered to specifically perform all its obligations required under the Collective Bargaining Agreement and the Agreements and Declaration of Trust of the Fund, and is restrained from continuing to refuse to perform as thereunder required.

STATEMENT OF CLAIM

COUNT I

14. Plaintiffs repeat and reallege all the allegations of Paragraphs 1 through 13 inclusive.

15. Therefore, Defendant is liable to Plaintiffs under ERISA for delinquencies regarding its employees in the following approximate amounts:

(a) An estimated \$50,734.82 in unpaid contributions from September 23, 2007, through November 17, 2007;

(b) Interest on all unpaid contributions;

(c) Liquidated damages of 20 percent of the unpaid contributions;

(d) Attorneys' fees; and

(e) Costs of this action.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request entry of a Judgment against Defendant and in favor of Plaintiffs

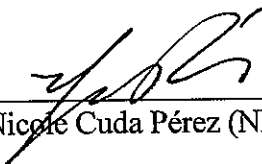
(a) for unpaid contributions to the Funds in an amount to be determined but estimated at \$50,734.82 against Defendant, along with all additional unpaid contributions as of the date of judgment pursuant to 29 U.S.C. § 1132(g)(2)(A);

- (b) for interest on said unpaid contributions pursuant to 29 U.S.C. § 1132(g)(2)(B);
- (c) for liquidated damages pursuant to 29 U.S.C. § 1132(g)(2)(C);
- (d) for costs, including reasonable attorneys' fees, incurred in the prosecution of this action pursuant to 29 U.S.C. § 1132(g)(2)(D);
- (e) that Defendant be specifically ordered to pay to Plaintiffs the required contributions due and owing as of the present date, as well as all contributions that may be due and owing as of the date of entry of judgment, together with applicable interest, liquidated damages, costs and fees;
- (f) that this Court retain jurisdiction to enforce the Defendant's continuing obligations under the applicable provisions of the Collective Bargaining Agreement and the Agreement and Declaration of Trust of the Fund; and
- (g) for such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
July 16, 2008

SPIVAK LIPTON LLP  
1700 Broadway, 21<sup>st</sup> Floor  
New York, New York 10019  
Tel: (212) 765-2100  
Fax: (212) 765-8954

Attorneys for the Plaintiffs

By:   
Nicole Cuda Pérez (NP 6663)

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IATSE LOCAL 478

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1/05

**IATSE ANNUITY FUND**  
Trust Acceptance Document

The undersigned Employer and undersigned Union agree as follows regarding Annuity Fund benefits for employees covered by the Collective Bargaining Agreement (the "CBA") between them:

**1. Trust Agreement**

Employer agrees to be bound by all of the terms and provisions of the Agreement and Declaration of Trust (the "Trust") establishing the IATSE Annuity Fund (the "Annuity Fund") dated February 1, 1995, as amended and the Annuity Fund's Statement of Policy and Procedures for Collection of Contributions Payable by Employers (the "Collection Guidelines") and to be represented in the administration of the Annuity Fund by the Employer Trustees therein named or by their successors.

**2. Computation of Contributions**

Commencing with the effective date for contributions under the current CBA between the Union and Employer, and continuing through any renewals, extensions or amendments thereof, Employer agrees to contribute the sum specified in paragraph 9 of this Trust Acceptance Agreement to the Annuity Fund for each and every employee whose position is covered by the CBA. If the CBA calls for contributions by the hour, day or shift, then it must be for each hour, day or shift or portion thereof for which such employee received pay from Employer (including days of paid vacations, paid holidays and any other days for which an employee receives pay), except to the extent provided in the CBA and detailed on page 2 of this Agreement.

**3. Payment of Contributions**

Payment of contributions as required above shall be made by check payable to the "IATSE Annuity Fund" and must be received in the Annuity Fund Office not later than: *For Weekly Contributors, the end of week following week of employment; OR For Monthly Contributors, the 10<sup>th</sup> day of each month following the week of employment.* Each payment of contributions shall be accompanied by a Remittance Report in the form supplied by the Annuity Fund.

Check One Box:    ☐ Monthly Contributor  
                         ☒ Weekly Contributor

Check here if CBA provides a different due date that set forth above ☐ *Indicate due date set forth in CBA*

**4. Records**

Employer agrees to maintain and make available to the Union, the Trustees or one or more of their designees for inspection and verification all of its records covering such employment in accordance with the Trust Agreement and the Annuity Fund's Collection Guidelines.

**5. IRS Compliance**

The Annuity Plan adopted by the Trustees shall comply with the requirements of the Internal Revenue Code so as to enable Employer to treat contributions to the Annuity Fund as a deduction for income tax purposes.

**6. Terms of the CBA**

A COPY of the current CBA will be provided by the Employer upon request by the Fund Office. This Trust Acceptance Agreement shall continue in full force and effect until the parties sign a successor CBA or extension that supercedes the contribution rate set forth in Paragraph 9 hereof, in which case the parties shall be required to sign a new Trust Acceptance Agreement and submit it to the Annuity Fund Office. Should the parties (i) fail to sign an extension agreement but continue performance of the CBA after its expiration date, or (ii) sign a renewal, extension or amendment of the CBA that does not change the contribution rate set forth in Paragraph 9 of this Trust Acceptance Agreement, this Trust Acceptance Agreement shall automatically be deemed extended thereby unless written notice to the contrary is received by the Annuity Fund.

**7. TERM OF CONTRACT:**

From FIRST DATE OF HIRE To COMPLETION OF PROJECT

**8. TYPE OF CONTRACT (e.g. Area Standards, Travelling Stage Employees Contract):** ASA SINGLE PRODUCTION AGREEMENT

CONTRACT

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Exhibit A

IATSE Annuity Fund Trust Acceptance, p. 2 of 2

9. CONTRIBUTION RATES:

From A/A To \_\_\_\_\_  
 \_\_\_\_\_ percent ( %) of (check which ever applicable) D gross D scale earnings; or \$ 20.00 (Twenty) per Day

of work.

With a minimum of \_\_\_\_\_ and a maximum of \_\_\_\_\_

From A/A To \_\_\_\_\_  
 \_\_\_\_\_ percent ( %) of (check which ever applicable) D gross D scale earnings; or \$ \_\_\_\_\_ per \_\_\_\_\_

of work.

With a minimum of \_\_\_\_\_ and a maximum of \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_  
 \_\_\_\_\_ percent ( %) of (check which ever applicable) D gross D scale earnings; or \$ 20.00 per DAY OF WORK\*

With a minimum of \_\_\_\_\_ and a maximum of \_\_\_\_\_

\*INSERT WHETHER IT IS PER hour OR PER day OR PER shift OF WORK

The parties hereto agree to the above provisions numbered 1-9:

FOR THE UNION:

IATSE LOCAL 478 NEW ORLEANS, LOUISIANA (City and State)  
 (Insert Name and Number of Local)  
 By: Michael J. McHugh BUSINESS AGENT MICHAEL J. McHUGH  
 (Signature of Authorized Officer) (Title) (Print Name)  
 Date: November 2, 2007

FOR THE EMPLOYER

SPRING BREAK & Co. LOUISIANA, LLC (Employer Federal Tax ID No.)  
 (Insert Name of Employer)  
607 St. Charles Ave, Suite 300, New Orleans, LA 70130  
 (Address) (City, State, Zip)

(Area Code/Telephone No.)  
 By: Mads Callahan (Signature of Authorized Officer) (Title) (Area Code/Fax No.)  
 (Print Name)  
 Date: OCTOBER 31, 2007

PAYROLL COMPANY (If Applicable) AXIUM

GARAH FREEMAN  
 Name of Contact Person  
300 E. Magnolia Blvd., Burbank, CA 91502  
 (Address) (City, State, Zip)  
(818) 557-2999 (818) 557-1582  
 (Area Code/Telephone No.) (Area Code/Fax No.)

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IATSE LOCAL 478

1/05

**IATSE NATIONAL PENSION FUND**  
Trust Acceptance Document

The undersigned Employer and undersigned Union agree as follows regarding Pension Fund benefits for employees covered by the Collective Bargaining Agreement (the "CBA") between them:

1. **Trust Agreement**  
Employer agrees to be bound by all of the terms and provisions of the Agreement and Declaration of Trust (the "Trust Agreement") establishing the IATSE National Pension Fund (the "Pension Fund") dated December 11, 2001, as amended and the Pension Fund's Statement of Policy and Procedures for Collection of Contributions Payable by Employers (the "Collection Guidelines") and to be represented in the administration of the Pension Fund by the Employer Trustees therein named or by their successors.
2. **Computation of Contributions**  
Employer agrees to contribute to the Pension Fund under the current CBA between the Union and Employer, and continuing through any renewals, extensions or amendments thereof, Employer agrees to contribute the sum specified in paragraph 9 of this Trust Acceptance Agreement to the Pension Fund for each and every employee whose position is covered by the CBA. If the CBA calls for contributions by the hour, day or shift, then it must be for each hour, day or shift or portion thereof for which such employee receives pay from Employer (including days of paid vacations, paid holidays and any other days for which an employee receives pay), except to the extent provided in the CBA and detailed on page 2 of this Agreement, but not more than seven (7) days in any calendar week for anyone employee.
3. **Payment of Contributions**  
Payment of contributions as required above shall be made by check payable to the "IATSE National Pension Fund" and must be received in the Pension Fund Office not later than: *For Weekly Contributors, the end of the week following the week of employment; OR For Monthly Contributors, the 15th day of the month following the month of employment.* Each payment of contributions shall be accompanied by a Remittance Report in the form supplied by the Pension Fund.  
Check One Box:      ☐ Monthly Contributor  
                         ☒ Weekly Contributor  
Check here if CBA provides a different due date that set forth above      *Indicate due date set forth in CBA*
4. **Records**  
Employer agrees to maintain and make available to the Union, the Trustees or one or more of their designees for inspection and verification all of its records covering such employment in accordance with the Trust Agreement and the Pension Fund's Collection Guidelines.
5. **IRS Compliance**  
The Pension Plan adopted by the Trustees shall comply with the requirements of the Internal Revenue Code so as to enable Employer to treat contributions to the Pension Fund as a deduction for income tax purposes.
6. **Terms of the CBA**  
A copy of the current CBA will be provided by the Employer upon request by the Fund Office. This Trust Acceptance Agreement shall continue in full force and effect until the parties sign a successor CBA or extension that supersedes the contribution rate set forth in Paragraph 9 hereof, in which case the parties shall be required to sign a new Trust Acceptance Agreement and submit it to the Pension Fund Office. Should the parties (i) fail to sign an extension agreement but continue performance of the CBA after its expiration date, or (ii) sign a renewal, extension or amendment of the CBA that does not change the contribution rate set forth in Paragraph 9 of this Trust Acceptance Agreement, this Trust Acceptance Agreement shall automatically be deemed extended thereby unless written notice to the contrary is received by the Pension Fund.

7. **TERM OF CONTRACT:**

From FIRST DATE OF HIRE

To COMPLETION OF PROJECT

8. **TYPE OF CONTRACT (e.g. Area Standards, Travelling Stage Employees Contract):**

9. **CONTRIBUTION RATES:**

From \_\_\_\_\_ To \_\_\_\_\_  
\_\_\_\_\_ percent ( %) of (check which ever applicable) ☐ gross ☐ scale earnings; or \$ \_\_\_\_\_ per  
of work. With a minimum of \_\_\_\_\_ and a maximum of \_\_\_\_\_

**CONTRACT**

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IATSE LOCAL 478

IATSE National Pension Fund Trust Agreement, p. 7 of 7

From N/A To N/A  
 percent ( %) of (check which ever applicable) D gross D scale earnings; or \$ 10.00 per day  
 of work. With a minimum of and a maximum of -  
 From N/A To N/A  
 percent ( %) of (check which ever applicable) D gross D scale earnings; or \$ 10.00 per DAY OF WORK\*  
 With a minimum of and a maximum of -

\*INSERT WHETHER IT IS PER HOUR OR PER day OR PER shift OF WORK

10. To Which Pension Plan Are You Contributing (Check One):

Pension Plan B D

Pension Plan C D

The parties hereto agree to the above provisions numbered 1-10:

FOR THE UNION:

IATSE LOCAL 478 NEW ORLEANS, LOUISIANA  
 (Insert Name and Number of Local) (City and State)  
 By: Michael J. McHugh BUSINESS AGENT MICHAEL J. McHUGH  
 (Signature of Authorized Officer) (Title) (Print Name)  
 Date: November 2, 2007

FOR THE EMPLOYER

SPRING BREAK 33 LTD. PARTNERSHIP, L.L.C. 65-131335  
 (Insert Name of Employer) Employer Federal Tax ID No.  
607 St Charles Ave, Ste 300, New Orleans, LA 70130  
 (Address) (City, State, Zip)  
 By: MASS SALLABHAN (Area Code/Fax No.)  
 (Signature of Authorized Officer) (Title) (Print Name)  
 Date: October 3, 2007

PAYROLL COMPANY (If Applicable) AXIUM

Sarah Freeman  
 Name of Contact Person  
300 E. Magnolia Blvd., Burbank, CA 91502  
 (Address) (City, State, Zip)  
(818) 557-2999 (818) 557-1582  
 (Area Code/Telephone No.) (Area Code/Fax No.)

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IATSE LOCAL 478

1/03

**IATSE NATIONAL HEALTH AND WELFARE FUND**  
Trust Acceptance Document

The undersigned Employer and undersigned Union agree as follows regarding Welfare Fund benefits for employees covered by the Collective Bargaining Agreement (the "CBA") between them:

1. **Trust Agreement**  
Employer agrees to be bound by all of the terms and provisions of the Agreement and Declaration of Trust (the "Agreement") establishing the IATSE National Health and Welfare Fund (the "Welfare Fund") dated May 1, 1997, as amended and the Welfare Fund's Statement of Policy and Procedures for Collection of Contributions Payable by Employers (the "Collection Guidelines") and to be represented in the administration of the Welfare Fund by the Employer Trustees therein named or by their successors.
2. **Commencement of Contributions**  
Commencing with the effective date for contributions under the current CBA between the Union and Employer, and continuing through any renewals, extensions or amendments thereof, Employer agrees to contribute the sum specified in paragraph 9 of this Trust Acceptance Agreement to the Welfare Fund for each and every employee whose position is covered by the CBA. If the CBA calls for contributions by the hour, day or shift, then it must be for each hour, day or shift or portion thereof for which such employee received pay from Employer (including days of paid vacations, paid holidays and any other days for which an employee receives pay), except to the extent provided in the CBA and detailed on page 2 of this Agreement, but not more than seven (7) days in any calendar week for any employee.
3. **Payment of Contributions**  
Payment of contributions as required above shall be made by check payable to the "IATSE National Health and Welfare Fund" and must be received in the Welfare Fund Office not later than: *For Weekly Contributors, the end of the week following the week of employment; OR For Monthly Contributors, the 10th day of the month following the month of employment, unless a different date is provided in the CBA.* Each payment of contributions shall be accompanied by a Remittance Report in the form supplied by the Welfare Fund.  
Check One Box:    ☐ Monthly Contributor  
                         ☒ Weekly Contributor  
Check here if CBA provides a different due date that set forth above: \_\_\_\_\_ *Indicate due date set forth in CBA*
4. **Records**  
Employer agrees to maintain and make available to the Union, the Trustees or one or more of their designees for inspection and verification all of its records covering such employment in accordance with the Trust Agreement and the Welfare Fund's Collection Guidelines.
5. **IRS Compliance**  
The Welfare Plan adopted by the Trustees shall comply with the requirements of the Internal Revenue Code so as to enable Employer to treat contributions to the Welfare Fund as a deduction for income tax purposes.
6. **Terms of the CBA**  
A copy of the current CBA will be provided by the Employer upon request by the Fund Office. This Trust Acceptance Agreement shall continue in full force and effect until the parties sign a successor CBA or extension that supersedes the contribution rate set forth in Paragraph 9 hereof, in which case the parties shall be required to sign a new Trust Acceptance Agreement and submit it to the Welfare Fund Office. Should the parties (i) fail to sign an extension agreement but continue performance of the CBA after its expiration date, or (ii) sign a renewal, extension or amendment of the CBA that does not change the contribution rate set forth in Paragraph 9 of this Trust Acceptance Agreement, this Trust Acceptance Agreement shall automatically be deemed extended thereby unless written notice to the contrary is received by the Welfare Fund.

7. **TERM OF CONTRACT:**

From DATE OF HIRE

To COMPLETION OF PROJECT

8. **TYPE OF CONTRACT** (e.g. Area Standards, Travelling Stage Employees Contract): ASA SINGLE PRODUCTION AGREEMENT

**CONTRACTS DEPT.**

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IATSE LOCAL 478

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IATSE National Health & Welfare Fund Trust Acceptance  
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## 9. CONTRIBUTION RATES:

From N/A To \_\_\_\_\_  
 \_\_\_\_\_ percent ( %) of (check which ever applicable) D gross D scale earnings; or \$ 40 (cents) per DAY  
 of work. With a minimum of \_\_\_\_\_ and a maximum of \_\_\_\_\_  
 From N/A To \_\_\_\_\_  
 \_\_\_\_\_ percent ( %) of (check which ever applicable) D gross D scale earnings; or \$ \_\_\_\_\_ per \_\_\_\_\_  
 of work. With a minimum of \_\_\_\_\_ and a maximum of \_\_\_\_\_  
 From N/A To \_\_\_\_\_  
 \_\_\_\_\_ percent ( %) of (check which ever applicable) D gross D scale earnings; or \$ 40.00 per DAY  
 of work. With a minimum of \_\_\_\_\_ and a maximum of \_\_\_\_\_  
 "INSERT WHETHER IT IS PER HOUR OR PER DAY OR PER SHIFT OF WORK."

10. To Which Plan Are You Contributing (Check One):  
 Health & Welfare Plan A ☐ (Note that Plan A has minimum daily rates)  
 Health & Welfare Plan C ☒ XXX

The Parties hereto agree to the above provisions numbered 1-10:

## FOR THE UNION:

IATSE LOCAL 478 NEW ORLEANS, LOUISIANA  
 (Insert Name and Number of Local) (City and State)  
 By: Michael J. McHugh BUSINESS AGENT MICHAEL J. McHUGH  
 (Signature of Authorized Officer) (Title) (Print Name)  
 Date: November 2, 2007

## FOR THE EMPLOYER

SPRING BREAK 83, LLC LOUISIANA, LLC 65-131335  
 (Insert Name of Employer) (Employer Federal Tax ID No.)  
607 St. Charles Ave #300, New Orleans, LA 70130  
 (Address) (City, State, Zip)  
 By: MICHAEL J. McHUGH Business Agent MICHAEL J. McHUGH  
 (Area Code/Telephone No.) (Signature of Authorized Officer) (Title) (Print Name)  
 Date: OCTOBER 31, 2007

PAYROLL COMPANY (If Applicable) AXIUM

300 E. Magnolia Blvd., Burbank, CA 91502  
 (Address) (City, State, Zip)  
(818) 557-2999 (818) 557-1582  
 (Area Code/Telephone No.) (Area Code/Fax No.)